

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6840

BILL NUMBER: HB 1365

NOTE PREPARED: Jan 23, 2012

BILL AMENDED:

SUBJECT: Dual Juvenile and Criminal Jurisdiction.

FIRST AUTHOR: Rep. McNamara

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: This bill has the following provisions:

- A. *Dual Jurisdiction* – It allows a court with criminal jurisdiction to exercise dual jurisdiction of both the criminal laws and juvenile laws concerning a juvenile offender or delinquent offender if the offender: (1) is less than 17 years of age and waived to the court because the offender committed an act that would be a felony if committed by an adult; and (2) is convicted of committing the felony or enters a plea of guilty to committing the felony.
- B. *Sentencing Options* – It requires a court that exercises dual jurisdiction concerning a juvenile offender or delinquent offender to: (1) enter a juvenile dispositional decree with respect to the offender; (2) impose an appropriate criminal sentence on the offender; and (3) provide that the criminal sentence is suspended and the successful completion of the juvenile dispositional decree is a condition of the suspended criminal sentence. It provides that when a juvenile offender or delinquent offender who has received a suspended criminal sentence becomes 18 years of age, the court must: (1) hold an evaluation hearing concerning the offender before the offender becomes 21 years of age; and (2) based upon the findings of the hearing, discharge the juvenile offender or delinquent offender if the court finds that the objectives of the dispositional decree have been met, order execution of all or part of the juvenile offender's or delinquent offender's suspended criminal sentence in an adult facility, or place the offender in home detention, in a community corrections program, on probation, or in any other appropriate alternative sentencing program.

Effective Date: July 1, 2012.

Explanation of State Expenditures: This bill would likely have a minimal effect on either the juvenile or adult facilities that the Department of Correction (DOC) operates and would depend on the discretion of the adult sentencing court. There are few juveniles (LSA counted 37 committed between January 1, 2009, through November 30, 2011) who are waived to adult court and ultimately committed to DOC adult facilities. On September 30, 2011, the number of beds available in DOC's adult facilities was at 97% capacity for adult males and 91% capacity for adult females. In contrast there were juvenile facilities at 65% capacity during the same period of time.

Within the facilities, this bill would permit DOC to place juveniles who have been found guilty of committing violent crimes and are in adult facilities in juvenile facilities until they reach 18 years of age. Juvenile facilities are considered more appropriate for most juveniles under 17 years old. As examples, 12 juveniles on average who were younger than 17 were committed to DOC adult facilities between 2009 and 2011. Under this bill, for individuals such as these, the adult sentencing court could determine whether the juvenile should be placed in a juvenile facility until they reach 18 years of age. The court would evaluate their progress before the juvenile becomes 21 and ages out of the juvenile facility and decide whether the juvenile should be either discharged because the juvenile has been reformed, whether the juvenile should be committed to a DOC adult facility, or whether the juvenile could qualify for community supervision.

There is also the possibility that more juveniles who were committed as delinquents and not adults could be given this dual sentence if the prosecuting attorney requests it. For certain crimes, the prosecuting attorney may request that the juvenile be waived to adult court and the juvenile court must comply. It is possible that if this dual option is available, more juveniles could be waived to adult court, giving the judge of the adult court the option to send the juvenile back to the juvenile facility until the juvenile turns 18. LSA estimates that an average of 93 juveniles each year had offenses that could qualify a prosecuting attorney to request a mandatory waiver to adult court. If these juveniles were waived to adult court and the adult court judge exercises a dual jurisdiction, then some of these persons could be transferred to an adult facility once they complete their sentence in the juvenile facility. The number of juveniles who might be waived cannot be determined.

Background – Children under the age of 18 and accused of certain offenses can be treated as juveniles or adults depending on their age and the severity of the offense.

If the child remains in juvenile court and the court finds the child guilty, the court will treat the child as a delinquent and commit the child to the DOC. DOC will then place the child in a juvenile facility and determine when the child can be released prior to when the child turns 21.

There are certain situations when the child can be waived to adult court. The following table summarizes these situations.

Conditions for Waiving a Juvenile To Adult Court	Types of Felonies and Ages
Automatic Filing in Adult Court If	The child is older than 16 and the crime is attempted murder, kidnaping, rape, criminal deviate conduct, Class A or B robbery, car jacking, criminal gang activity, possessing handgun w/out license, dealing in sawed off shotgun; or if the child has been already waived to adult court for a prior offense.
Mandatory Waiver If the Prosecuting Attorney Requests it and	The child is between 10 and 16 and is accused of murder; the child is older than 14 and is accused of a crime that is a heinous and aggravated felony and part of pattern of delinquent acts; the child is older than 16 and is accused of committing a Class A or B felony (other than drug-related) or a Class C felony involving involuntary manslaughter or reckless homicide.
Discretionary Waiver If the Prosecuting Attorney Requests it and	The child is older than 16 and is accused of committing a drug-related felony or any felony and the best interest of safety and welfare of community is at question.

Juveniles Committed to Adult and Juvenile Facilities					
		2009	2010	2011	3-Year Average
Juvenile Facilities	Mandatory Waiver	110	60	109	93
	Discretionary Waiver	241	314	152	236
	Juvenile Cases	732	633	794	720
	Totals	1,083	1,007	1,055	1,048
Adult Facilities	Waived to Adult Court	19	15	3	12
	Automatic Filing in Adult Court*	6	7	12	8
	Totals	25	22	15	21

* Persons under age 18 who were sentenced for committing one of the following crimes: Attempted murder, kidnaping, rape, crim dev conduct, class A or B robbery, car jacking, criminal gang activity, possessing handgun w/out license, dealing in sawed off shotgun

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: Juvenile courts, adult sentencing court.

Information Sources: Department of Correction Offender Information System.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.